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IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

In the Matter of

STEPHEN FRANK WYRICK;
TIFFANY LYNN WYRICK

Debtors.

RABOBANK, N.A.,

Plaintiff

v.

STEPHEN FRANK WYRICK,

Defendant

Case No. 11-50240 SLJ

Chapter 7

Adv. Pro. No. 11-05122

**MOTION TO APPROVE PROPOSED
COMPROMISE AND JUDGMENT FOR
NON-DISCHARGEABILITY (11 U.S.C.
523 (a)(6)), DISMISSAL OF CLAIMS (11
U.S.C. 523 (a)(4)); AND DISMISSAL OF
CLAIMS FOR DENIAL OF
DISCHARGE (11 U.S.C. 727 (a)(2)(A)
and 727 (a)(3))**

Date: July 26, 2012

Time: 1:30 p.m.

Place: U.S. Bankruptcy Court
280 South First Street, Ctrm. 3099
San Jose, CA

Judge: Hon. Stephen L. Johnson

COMES NOW, Stephen Frank Wyrick ("Defendant" or "Wyrick"), and submits the
following motion and memorandum of points and authorities in support of a Motion to Approve
Proposed Compromise and Judgment for Non-Dischargeability (11 U.S.C. 523 (a)(6)), Dismissal

of Claims (11 U.S.C. 523 (a)(4); and Dismissal of Claims for Denial of Discharge (11 U.S.C. 727 (a)(2)(A) and 727 (a)(3)) (“Motion”)¹ as follows:

I. Introduction.

The Motion seeks an order approving a compromise and proposed judgment between Plaintiff Rabobank, N.A. (“Plaintiff” or “Rabobank”) and Defendant, dismissing Plaintiff’s claims made pursuant to 11 U.S.C. 523 (a)(4) with prejudice, and dismissing the claims for denial of discharge made pursuant to 11 U.S.C. 727 (a)(2)(A) and 727 (a)(3)) with prejudice. The essential terms of the compromise between Plaintiff and Defendant, as set forth in a settlement agreement (“Compromise”) are relatively straightforward and provide that, subject to court approval, Plaintiff will dismiss its claims against Defendant made pursuant to 11 U.S.C. 523 (a)(4) with prejudice, Plaintiff will dismiss its claims for denial of discharge made pursuant to 11 U.S.C. 727 (a)(2)(A) and 727 (a)(3)) with prejudice, Defendant will stipulate to entry of a judgment pursuant to 11 U.S.C. 523 (a)(6) for \$75,000 payable over approximately seventy-two (72) months with provisions whereby Defendant can satisfy the judgment by payment of a total of \$40,000 over approximately sixty (60) months, the parties otherwise mutually agree to dismissal of all claims between them, and the parties each bear their own attorneys fees and costs.

II. Factual Background.

Pride of San Juan, Inc. (“PSJ”) is a California corporation, Wyrick was a shareholder, director, President, and CEO of PSJ. In approximately December 2007 PSJ borrowed \$4.5 million from Rabobank pursuant to two Agricultural Loan Agreements and two Promissory Notes, PSJ executed an Agricultural Security Agreement that granted Rabobank security interests including, *inter alia*, inventory, equipment, accounts receivable, and general intangibles, and Wyrick executed two commercial guarantees, obligating himself to repay PSJ’s obligations to Rabobank.

¹Said Motion is brought by Defendant pursuant to the underlying agreement with Plaintiff.

1 Subsequently, PSJ defaulted on these obligations to Rabobank. Rabobank asserts that as
2 of April 24, 2012, after all credits, it was owed \$3,375,358.32 in principal and interest on these
3 obligations.

4 On February 16, 2010, Rabobank initiated an action against PSJ and Wyrick to enforce
5 their obligations styled *Rabobank, N.A. v. Pride of San Juan, Inc., et al.*, San Benito County
6 Superior Court Case No. CU-10-00034 (the “State Court Action”). In April 2010 the State
7 Court issued a Protective Order prohibiting the transfer or disposition of PSJ’s assets and
8 Rabobank’s collateral, in June 2010, issued a second Protective Order prohibiting the transfer
9 and disposition of PSJ’s assets, and in July 2010 issued an order appointing Steve Franson as the
10 receiver over Rabobank’s collateral. Rabobank subsequently pursued contempt against Wyrick in
11 the State Court Action, allegations which Wyrick denied.

12 On January 11, 2011, Wyrick filed Chapter 7 bankruptcy. Plaintiff commenced this action
13 on April 15, 2011 and asserted claims based on 11 U.S.C. 523 (a)(4) and (a)(6) and 11
14 U.S.C. 727 (a)(2)(A) and 727 (a)(3)) and premised on the same or similar allegations as
15 contained in the State Court Action. Defendant, in the State Court Action and in this adversary
16 proceeding, denied any wrong doing relative to Rabobank, PSJ, PSJ’s bankruptcy, and his
17 personal bankruptcy. Wyrick noted that PSJ was a very profitable and growing company from
18 1995 to 2005, at times employed over six hundred people and at one point had over \$56 million
19 in sales; in 2006 Natural Selection/Earthbound Farms (“Earthbound”), pursuant to a pending
20 purchase of PSJ, took possession and control of PSJ, and thereafter processed, packed and
21 shipped ecoli spinach which caused the death of six people and made over one hundred people
22 sick and resulted in it rescinding its purchase. Wyrick also noted that following the Earthbound
23 tragedy and notwithstanding PSJ and his efforts, PSJ spiraled financially, lost acreage, lost
24 employees, defaulted on its obligations to Rabobank, and eventually filed Chapter 7 bankruptcy.
25 Wyrick consistently submitted that he had properly accounted for the assets of PSJ, Rabobank’s
26 collateral, and the proceeds of such.

27 The parties litigated the matter as part of the State Court Action, litigated this adversary
28

proceeding including discovery, motions for summary judgment, and pre-trial preparations and in this regard expended substantial resources. While Plaintiff may believe that it pursued the claims in good faith, the Defendant submits there is no merit to any claims made pursuant to Section 727 and the only claims made pursuant to Plaintiff's Section 523 claims and its collateral had any potential merit. After extensive discussions and negotiations, the parties reached an agreement which is summarized hereinabove and formalized in the Compromise.

III. Legal Authority.

Federal Rules of Civil Procedure, Rule 41² (a)(2) provides, in pertinent part:

“(a) Voluntary Dismissal

(1) By the Plaintiff . . .

(2) By Court Order; Effect. Except as provided in Rule 41(a)(1), an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper. . . Unless the order states otherwise, a dismissal under this paragraph (2) is without prejudice.”

The parties submit that good cause exist to approve the Compromise pursuant to Rule 41 (a)(2). In this regard, the parties note that after more than one year since the case was commenced, various discovery was conducted, motions for summary judgment were presented to the court for consideration, and extensive discussions and negotiations, they reached an agreement based on many factors, including determinations that the litigation process had become prohibitively expensive, the success on the merits remained limited and questionable, recovery on a prospective judgment remained limited and questionable, and continued litigation seemed unreasonable relative to the cost of prosecution and defense, the likelihood of success on the merits, and recovering greater than the cost of prosecution or defense costs to be incurred.

III. Conclusion.

Defendant submits that good cause exists to approve the Motion.

Dated: June 21, 2012

CAMPEAU GOODSSELL SMITH
/s/ William J. Healy
William J. Healy

²Made applicable to adversary proceedings pursuant to Federal Rules of Bankruptcy Procedure, Rule 7041.